Supreme Court of the United States

OCTOBER TERM, 1943

No. 1038 103

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE, CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

WILLIAM L. STANDARD,
Attorney for the Petitioners.

HERMAN ROSENFELD,
on the Brief.

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To the Supreme Court of the United States:

Petitioners, Harry Newman, Frederick Batchelor, Juan Uribe, Crescencio Martin, Ramon Mosquero, Mario Lefler and Francisco Martinez, respectfully allege:

A

Summary Statement of Matters Involved

This cause was filed in admiralty on August 17, 1942 in the District Court of the United States for the Southern District of New York to recover additional wages for the wrongful discharge of petitioners, seamen employed on board the SS. Querigua, a merchant vessel of the United

States owned and operated by the respondent, United Fruit Company, under Chapter 18, Title 46, United States Code, Section 594, which provides:

> "Any seaman who has signed an agreement and is afterward discharged before commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence, satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

Originally, the United States of America, the United States Maritime Commission and United Mail S. S. Co. were also named as respondents, but at the trial in the District Court, suit was withdrawn against them and the action proceeded against the United Fruit Company only (R. 10), on an agreed statement of fact (R. 11-15).

Respondent engaged the petitioners as members of the crew of the SS. Querigua on May 28, 1941, to serve on a foreign voyage. Shipping articles were duly signed pursuant to statute before a United States Shipping Commissioner in the City of New York (R. 10). Articles were in the usual form and in addition to fixing the monthly rate of cash wages for each of the petitioners and the other members of the crew, provided that in return for the services they were to render, they were to receive provisions as set out in the articles. The value of the subsistence, it was agreed, amounted to $2.50 per day, or $75.00 a month for each of the petitioners (R. 12).

The proposed voyage was never made. On May 29, 1941, the respondent discharged the petitioners without their consent and for no fault of theirs, paying to each of them one day's cash wages.

The libel demands damages under the provisions of Section 594 and computes the additional wages claimed

under that statute by adding to the monthly cash earnings stipulated in the shipping articles, the value of the food and lodging to be furnished petitioners.

Respondent contended that there was no liability imposed upon it for any additional payments. It showed that the SS. Querigua had been chartered to the United States Maritime Commission for the use of the Navy, in anticipation of requisition pursuant to Executive Order, on May 29, 1941. The first notice of the proposed requisition was received on May 27, 1941, one day before the petitioners were engaged. On the 28th day of May, 1941, respondent's officers, after first endeavoring unsuccessfully to avert immediate requisition, agreed to deliver the vessel at the first possible moment and did, in fact, do so on May 29, 1941. The respondent urged these facts as a bar to any liability, insisting further that if the Court found otherwise, additional wages payable under Section 594 are restricted to the cash payments specified by the shipping articles and are not to be deemed to include the value of food and lodging.

The District Court rendered a decree for the petitioners on May 18, 1943. It found respondent liable for additional wages pursuant to statute but used as the measure of damages, the monthly cash earnings stipulated in the shipping articles, refusing to take into account the value of the food and lodging to be furnished by the respondent to the petitioners in return for their services.

Both sides then appealed from the decree. Respondent assigned as error the District Court's finding that petitioners were entitled to an additional month's wages; petitioners assigned as error the Court's failure to include the value of food and lodging in its computation of damages.

The Circuit Court of Appeals for the Second Circuit unanimously affirmed the decree in all respects on February 29, 1944.

B

Jurisdiction

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (Tit. 28, U. S. C., Sec. 347).

C

Question Involved

The District Court limited recovery to cash remuneration on the ground that " * * * when Congress used the word 'wages' they meant wages as commonly understood and not wages and subsistence" (50 Fed. Supp., at p. 67). The Circuit Court of Appeals, affirming, declared that while "the statute is not punitive and should be construed liberally, we see no reason to add to it what does not appear on its face" (141 Fed. (2d), at p. 193). That companion statutes relating to seamen's wages mention "wages and provisions" while the statute directly involved refers only to "wages" was held "not to be without significance". The proper construction of the statute presents an important question of maritime law to this Court for determination.

D

Reasons for Granting Writ

1. The decision of the Circuit Court of Appeals is in apparent conflict with a decision of the Circuit Court of Appeals for the Fourth Circuit, *Lakos* v. *Saliaris,* 116 Fed. (2d) 440 (1940), which construed Chapter 18, Title 46, United States Code, Section 597, to apply to war bonus payments to a seaman, holding that wages include all "the compensation allowed to seamen for their services on board a vessel during a voyage" (at p. 442). If the reasoning of this

case be adopted, then that of the Circuit Court of Appeals in the case at bar is erroneous.

The ruling of the Fourth Circuit that wages comprehend every form of compensation payable to seamen for their services is obviously inconsistent with that of the Second Circuit here, limiting the application of the term to monthly cash payments. The Fourth Circuit's opinion is clearly broad enough to embrace food and lodging and to justify a conclusion opposite to that reached by the Second Circuit.

2. The Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court. The decision below is probably inconsistent with the legislative intent and contrary to the principles of construction which should be applied to the determination of this case. No reported cases in which this Court has considered the specific issue involved have been found.

The Courts below, construing the statute, disregarded the accepted definition of the term "wages". Almost without exception wages are considered to include every form of compensation received by an employee in return for his services. State and federal enactments dealing with wages have accepted this definition as have administrative rulings. In the absence of statutory definition, the Courts, both state and federal, have arrived at the same construction.

When employees in other industries work under conditions similar to those of seamen, in that they receive food and lodging in return for their services in addition to cash remuneration, their rights with respect to wages have been construed to embrace not only the money they receive, but also the value of all other emoluments. A construction of Section 594 which does not follow these principles can be justified only by the conclusion that Congress intended to place seamen in a less favorable position than workers ashore. This inference is unreasonable and inconsistent with the purposes of the Congressional regulation of maritime employment, which has always been to broaden the

rights of seamen and to enlarge the remedies available to them.

The Court below failed to give effect to this policy of Congress when it curtailed the relief which petitioners sought. The statute was manifestly designed to assure petitioners and other seamen that when they engaged upon a voyage they would receive at least one month's earnings. The cash payments for which they contracted are fixed at levels so low as to compel the conclusion that they are conditioned upon the value of the food and lodging which they are to receive in return for their services. Damages for unlawful discharge do not, therefore, reflect the true contractual relationship unless they take into account the actual earnings computed on the basis both of cash payments and the value of food and lodging.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court a complete transcript of the record and all proceedings had in said Circuit Court of Appeals for the Second Circuit in the case therein entitled "Harry Newman, Frederick Batchelor, Juan Uribe, Crescencio Martin, Ramon Mosquero, Mario Lefler and Francisco Martinez against United Fruit Company; and that said case may be reviewed and determined by this Court and the decision therein finally revised; and that your petitioners may have such other and further relief in the premises as to this honorable Court may seem appropriate.

Respectfully submitted,

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE, CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER and FRANCISCO MARTINEZ,

By: WILLIAM L. STANDARD,
Attorney.

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Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

PETITIONERS' BRIEF ON APPLICATION FOR WRIT OF CERTIORARI

I

Statutes Involved

Ch. 18, Tit. 46, U. S. C., Sec. 594:

"Right to wages in case of improper discharge. Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned. (R. S. Sec. 4527.)"

II

Opinions Below

The opinion of the Circuit Court of Appeals was made on February 29, 1944 and is reported in 141 Fed. (2d) 191. The opinion of the District Court is reported as *Newman* v. *United States et al.* at 50 Fed. Supp. 66. The order for mandate was made and filed May 23, 1944.

III

Jurisdiction of This Court

The jurisdiction of this Court is to be found in Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

IV

Statement of the Case

A full statement is to be found in the petition and is, therefore, omitted here for brevity.

V

Question Involved

The case presents the question of the proper construction and application of Chap. 18, Title 46, United States Code, Sec. 594, which provides, in substance, that when seamen are unjustifiably discharged under certain circumstances they are to receive, in addition to their wages, an additional month's wages as damages. Petitioners contend that one month's wages include the cash value of any emoluments other than money which they were to receive

for their services; respondents, that damages are to be measured by the cash payments provided in the shipping articles.

VI

Error Relied On and Summary of Arguments Specified as Grounds of Appeal

The construction of a statute of great importance to maritime labor in a manner unnecessarily restrictive of the rights of seamen, and in apparent conflict with the decision of a Circuit Court of Appeals for another Circuit, requires review by certiorari.

The judgment below curtailed petitioners' enjoyment of a right conferred by Congress. Wages include all the compensation received by seamen, whether in money or in kind, and a statute measuring damages in terms of wages should be construed to extend to the value of emoluments as well as to money payments.

This question was raised in the Court below in the specified grounds of appeal (R. 31, 32).

VII

The Construction Placed Upon the Statute by the Court Below Defeated the Legislative Intent and Deprived Petitioners of Substantial Rights

The facts are not in dispute. Petitioners were engaged as seamen aboard the SS. Querigua, a vessel owned and operated by the respondent (R. 6, 7, 12). After their employment, but before the voyage began, they were unjustifiably discharged (R. 12). They thus became entitled to one month's wages in addition to wages actually earned. *Ch. 18, Tit. 46, U. S. C., Sec. 594.* They have a decree for the amount of cash payment they would have received in

the course of a month's service, but their claim for the value of one month's subsistence has been denied. The only question now presented is the meaning that Congress intended to give to the word "wages" as used in the statutes affecting seamen.

The statute itself contains no definition. The history of its enactment provides none.[1] The only guides to construction, therefore, are those to be found in the ordinarily accepted meaning of wages[2] and in the basic policy that motivated Congress.[3] This Court has not considered the problem in any reported decision,[4] so that this case presents an important question of Federal law which has not been but should be, settled by this Court.

A. Petitioners were to receive food and lodging for their services.

The shipping articles executed between the petitioners and the Master of their vessel as agent for the respondent were in the usual form (R. 12) as prescribed by statute. *Ch. 18, Tit. 46, U. S. C., Sec. 713.* The Master was to give them " * * * as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale". *idem.*

Unless seamen receive food in correct quantity and quality, the Master has violated their contract of employment and has denied them a substantial portion of their compensation. *The John L. Dimmick,* 13 Fed. Cas. No. 7355 (1858). The mere payment of "the sums against

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[1] The present statute is derived from Act of June 7, 1872, c. 322, Sec. 21. There was no discussion of the meaning of wages either in Committee or on the floor of Congress. Congressional Globe, March 20, 1872.

[2] *United States* v. *Merriam,* 263 U. S. 179 (1923).

[3] *Platt* v. *Union Pac. R.R. Co.,* 99 U. S. 48 (1879).

[4] In *The Steel Trader,* 275 U. S. 388 (1928), Sec. 594 was considered, but the meaning of "wages" as there used was not in issue.

their names respectively expressed" at the end of a voyage on a vessel carrying short rations is not considered full compensation. The crew may still demand the cash equivalent of the provisions with which they were not supplied. *Ch. 18, Tit. 46, U. S. C., Sec. 665, The Rodney*, 20 Fed. Cas. No. 11993 (1831); *Billings* v. *Bousback*, 200 Fed. 523, 527 (C. C. A. 9, 1912); *Nelson* v. *Pastel*, 232 Fed. 682, 686 (C. C. A. 9, 1916). The total consideration payable to the petitioners under their contract of employment cannot be truly measured unless the value of their subsistence is taken into account.

A comparison of maritime wages with those paid in other industries to workers of equivalent, or even lesser skills, demonstrates to what extent seamen receive their compensation in the form of emoluments other than money. The shipping articles provided that petitioners were to receive compensation at monthly rates ranging from $77.50 to $127.50 in addition to subsistence (R. 3). Their work week consists of seven days of eight hours.[5] Petitioner Batchelor, a bedroom steward, received but the equivalent of 32 cents an hour in money. National War Labor Board findings show an astonishing differential between this hourly rate and hourly rates ashore.[6] The explanation is that seamen receive less in cash because they receive, in addition, their subsistence during their term of employment. Maritime labor costs are not unique in this respect; a simi-

[5] Act of Mar. 4, 1915, c. 153, Sec. 2, as amended June 25, 1936, Tit. 46, U. S. C., Sec. 673.

[6] Hotel maids in the City of New York, performing substantially the same kind of work under considerably less hazardous and more favorable conditions, earned $16.85 weekly for a work week of 45 hours, exclusive of board and lodging, prior to November, 1942. This was found to be below the prevailing level and was increased by two dollars weekly. Even before the increase the hourly rate was 37 cents, exclusive of subsistence. Hotel Assoc. of New York, Inc., NWLB Case No. BWA-362, Nov. 21, 1942.

lar condition prevails in other industries, agriculture for example.[7]

Any statute, therefore, which purports to give to seamen a remedy in the form of wages or additional wages, if it is to reflect the actual economic factors involved, must consider wages as including all the items given in return for services on board a vessel.

B. Wages include food and lodging furnished to employees.

Where employment carries with it emoluments in addition to regular payments in cash, the aggregate value of all items has always been considered as the wages paid. This is the test provided by the Fair Labor Standards Act of 1938;[8] by the Inflation Control Act of 1942;[9] the Longshore and Harbor Workers Compensation Act;[10] the Social Security Act;[11] the Current Tax Payment Act of 1943;[12] state unemployment insurance acts;[13] and most state work-

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[7] Schwartz "On the Wage Structure of Agriculture", 57 Pol. Sc. Quar. No. 3, Sept. 1942.

[8] Act of June 25, 1938, c. 676, Sec. 3; Tit. 29, U. S. C., Sec. 203(m).

[9] Act of Oct. 2, 1942, c. 578, Sec. 10, as amended by Act of April 12, 1943; Tit. 50, U. S. C., Sec. 970.

[10] Act of Mar. 4, 1927, c. 509, Sec. 2; Tit. 33, U. S. C., Sec. 902(13).

[11] Act of Aug. 14, 1935, c. 531, Tit. VIII, Sec. 811 as amended by Act of Aug. 10, 1939, c. 666; Tit. 42, U. S. C., Sec. 1101.

In the consideration of the extension of unemployment benefits to maritime labor, the value of subsistence was assumed to be part of wages. Hearings relative to the Social Security Act amendments of 1939 before the Committee on Ways and Means, House of Representatives, 76th Congress, 1st Sess., Vol. 3, p. 2497.

[12] Act of June 9, 1943, Int. Rev. Code, Tit. 26, U. S. C., Sec. 1621(a).

[13] The definition used in the New York Act is typical:

Labor Law, Art. 18, Sec. 502, subd. 6

"6. 'Remuneration' shall mean every form of compensation for employment paid to an employee by his employer, whether

men's compensation laws.[14] It is the principle followed in administrative rulings as well.[15] English statutes apply the same definition.[16] In the absence of explicit statutory direction, the courts have acted upon the same principle. *O'Callahan* v. *Dermody*, 197 Ia. 632 (1924); *Haas* v. *Globe Indem. Co.*, 16 La. App. 180 (1931); *Medland* v. *Haule Bros.*, 202 Mich. 532 (1918). English Courts have come to the same conclusion. *Liffen* v. *Watson*, 2 All England L. R. 213, 1940, C. A. The Court there, in an action for damages for personal injuries, considered whether the value of food and lodging received by a domestic servant should be included in the measure of special damage, and held:

> " * * * if the judge at the new trial does come to the conclusion that this plaintiff's contract was that she

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paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging or similar advantage received. Where gratuities are received by the employee in the course of his employment from a person other than his employer, the value of such gratuities shall be determined by the commissioner and be deemed and included as part of his remuneration paid by his employer. * * * "

Other state laws are collected in the appendix.

[14] Workmen's Compensation Law, Art. I, Sec. 2(9) (New York)

"9. 'Wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, or in the case of a volunteer fireman such money rate applying in his regular vocation or the amount of the regular earnings of such volunteer fireman in his regular vocation."

Other state laws are collected in the appendix.

[15] Executive Order 9250, 1942, as amended by Executive Order 9281, 1943, Tit. VI, Sec. 2 (Relating to Wage Stabilization).

In computing the tax for old age benefits under the Social Security Act, to which seamen are eligible, the value of food and lodging is considered as an integral part of a seaman's compensation. Code of Fed. Reg., 1940 Supp., Sec. 403.827.

[16] Workmen's Compensation Act, 1906, c. 58. The Act applies to seamen, *Roscnquist* v. *Bowring & Co., Ltd.*, 2 K. B. 108 (1908).

> was to be paid a certain amount of cash and a certain amount in kind * * * then I see no reason why, in estimating the damage, the loss in kind should not stand upon the same footing as the loss in cash * * *."

Those statutes which do not exclude seamen from their application [17] provide the same definition for a seaman's wages as they do for the wages of the employees in other industries.[18] There is a paucity of reported cases in this country dealing with the question. The English courts, however, construing maritime laws bearing a close similarity to those adopted by Congress, have understood seamen's wages to include subsistence. *Dothie* v. *Macandrew & Co.*, 1 K. B. 803 (1908); *The Croxteth Hall; The Celtic*, 10 N. S. 184 (House of Lords).[19]

The inclusion of subsistence in wages is so generally accepted that Congress must be deemed to have intended the same meaning. *United States* v. *Merriam*, 263 U. S. 179 (1923).

C. The legislative intent was to measure damages under the statute in terms of the entire compensation to be paid to petitioners.

Examination of the statutes with which Section 594 is *in pari materia* reveals a pattern from which the legislative intent can be inferred. The incidents of maritime employment from hiring to discharge, including the manner and time of wage payments, are regulated.[20] The manifest pur-

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[17] Most unemployment insurance statutes exclude seamen, apparently because of the difficulty apprehended in determining when benefits should be paid. Hearings relative to Social Security Acts, supra, pp. 2488-2498.

[18] E.g. The Wage Stabilization Act of 1942, supra, makes no special provision for maritime labor.

[19] The majority opinion is silent on the inclusion of the value of subsistence in the judgment, but from the language of the dissent it is apparent that this was taken into account.

[20] Ch. 18, Tit. 46, U. S. C., Secs. 541-713.

pose is to assure to seamen reasonably just treatment. Crew members are given the right to part of their pay upon arrival at a port;[21] full payment must be made immediately upon the conclusion of the voyage upon pain of drastic penalties;[22] wages are no longer conditioned upon cargo.[23]

There is no evidence of any intention to restrict the rights of seamen. The Congressional design was to broaden them in order to compensate, in some measure, for the hardships to which seamen are subject and to ameliorate the abuses to which they are peculiarly vulnerable. Among these, and not the least important, is the extremely casual character of maritime employment.[24] It was altogether consonant with Congressional concern for the welfare and protection of seamen to assure them that when they joined a vessel, they would earn at least the equivalent of one month's earnings. It is this that Section 594 accomplishes.

To effectuate its purpose, the statute should be construed to obtain for seamen who claim its benefits the same economic benefits they would have earned aboard ship—money payments and the value of the subsistence they would have received. Companion statutes distinguish between wages and provisions only for limited purposes. They do not purport to limit the meaning of wages as employed in Section 594. Section 591 merely declares when wages commence and when meals are to be furnished. Section 665 deals with provisions as wages. See *The John L. Dimmick*, supra.

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[21] Ibid. Sec. 597.

[22] Ibid. Sec. 596.

[23] Ibid. Sec. 592.

[24] Report of Subcommittee on War Mobilization of the Committee on Military Affairs, pursuant to S. Res. 107, 78th Cong., 1st Sess., Oct. 7, 1943, p. 15.

Since the statute is concededly remedial,[25] its construction should be that which best lends itself to the fulfillment of its purpose. *Platt* v. *Union Pac. R. R. Co.*, 99 U. S. 48 (1879). To give to wages a restrictive meaning would not place petitioners in the position of having earned a month's wages. The amount of their cash remuneration is subject, while they are ashore, to the expenses of living, whereas on board ship it is received above all such expense. The Court below did not, therefore, award them one month's wages in the sense contemplated by the contract of employment, but a month's wages less the cost of subsistence. There is no evidence that Congress, which made the supply of provisions a contractual obligation, intended such a result.

In another context, the narrow construction given by the court below might be appropriate. Since it can best be fulfilled by resort to a broader definition, settled rules of statutory construction require that this be done. *Sacramento Nav. Co.* v. *Salz*, 273 U. S. 326 (1927); *United States* v. *Fowler*, 302 U. S. 540 (1938).

Construction of the Fair Labor Standards Act of 1938 presented a similar problem. The definition of wages there does not specifically mention gratuities received by employees from patrons, although it does include "the actual cost to the employer of the board, lodging or other facilities customarily furnished by him to his employees * * *."[26] Again, the legislative history does not reveal any specific expression of intent. Taking into account the true meaning of the contract of employment, this Court declared the tips received by red caps to be part of their wages. *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386 (1942). In so doing, it ruled that the form taken by

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[25] The Circuit Court so held, 141 Fed. (2) 191, at p. 193. See also *The Steel Trader*, supra, at p. 392; *Calvin* v. *Huntley*, 178 Mass. 29, 32.

[26] Fair Labor Standards Act, Sec. 3(m), Tit. 29, U. S. C., Sec. 203(m).

an employee's compensation was not the determining factor in the computation of his earnings; that the significant circumstance was whether it was received in return for services.

To apply the same test to petitioners' contracts can lead only to the conclusion that the value of their subsistence formed part of their wages and that a fair construction of Section 594 compels that it be enforced accordingly.

VIII

The Opinion of the Circuit Court Below Is in Apparent Conflict with a Decision of the Court of Appeals of Another Circuit

Section 597, Chapter 18, Title 46, United States Code, provides that the members of a ship's crew may demand half the wages they have earned each time they arrive at a port.[27] It held that no matter how designated, in a statute

[27] C. 18, Tit. 46, Sec. 597

"597. Payment at ports. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in the preceding section; *Provided further*, That notwithstanding any release signed by any seaman under section 644 any court having jurisdiction may upon good cause shown set aside such release and take such action as jus-

* Read here the matter bracketed on p. 18.

or in a contract, anything given in return for personal services is to be considered as wages (at p. 442). The Court cited as authority cases holding that food and lodging so furnished constitute wages.

This decision of the Court of Appeals for the Fourth Circuit conflicts with that of the Second Circuit in the case at bar. The war bonus in the *Lakos* case was payable in addition to the basic wage established by the contract of employment (*idem.*). Had the rule of construction applied by the Court below to Section 594 been followed there, the right created by Section 597 would be confined to basic wages. Affecting as it does rights and remedies important in the administration of laws relating to maritime labor, the conflict of decisions should be settled by this Court. Considering the question of bonus as a part of wages under this statute, the Circuit Court of Appeals for the Fourth Circuit arrived at a conclusion diametrically opposite in principle to that of the Circuit Court of Appeals in the case at bar. *Lakos* v. *Saliaris*, 116 Fed. (2d) 440.

CONCLUSION

Two reasons why a writ of certiorari should issue to the Circuit Court of Appeals for the Second Circuit are submitted by the petition herein. The proper construction of the statute involved is of great importance in maritime law. The rights of almost 200,000 men engaged in manning merchant vessels of the United States are involved.[28] This Court has never passed upon the question of the significance of the term "wages" as used in maritime law. The issue is important to the proper administration of the statute relating to seamen and should not be permitted to remain in doubt.

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tice shall require; *And provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

[28] Report of Subcommittee on War Mobilization, supra, p. 14.

The antithesis of the positions adopted by two Circuit Courts of Appeal, an independent ground of jurisdiction, emphasizes the importance of the question and the need for a conclusive resolution of it. The petition for the writ should be granted.

Respectfully submitted,

WILLIAM L. STANDARD,
Attorney for Petitioners.

HERMAN ROSENFELD,
on the Brief.

APPENDIX *

State Unemployment Compensation Statutes which include board and lodging in their definition of wages:

1. Code of Alabama, 1940, Title 26, Chap. 4, Art. 1, Sec. 191.
2. Arizona Code, 1939, Vol. 4, Chap. 56, Art. 10, Sec. 56-1019.
3. Pope Digest of the Statutes of Arkansas, 1937, Vol. III, Chap. 97, Sec. 8550(n).
4. 1939 Supplement to General Statutes of the State of Connecticut, Jan. Sessions, 1937, 1939, Chap. 280(a), Sec. 1334 e.
5. District of Columbia Code, 1940, Title 46, Part V, Chap. 3, Sec. 46:301 (8:311).
6. Florida General Acts and Resolutions, Chap. 20, Laws of Florida, Acts of 1941, Sec. 443.03.
7. Illinois Revised Statutes, 1943, Chap. 48, Sec. 218.
8. Code of Iowa, Chap. 77.2, Sec. 1551.25.
9. Kentucky Revised Statutes, 1942, Chap. 341.
10. Maryland Code of Public General Laws, 1939, Vol. 2, Art. 95A, Sec. 19.
11. Laws of Minnesota, 1943, Chap. 650, Sec. 4337-22.
12. Mississippi Code, 1942, Vol. 5, Title 26, Chap. 5, Art. 11, Sec. 7440(n).
13. Missouri Revised Statutes, 1939, Vol. 2, Chap. 52, Art. 2, Sec. 9423.
14. Montana Revised Codes, 1935, Vol. 2, Chap. 256-A, Sec. 3033.58.

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* Statutes referred to in notes 13 and 14, pp. 12, 13.

15. Compiled Statutes of Nebraska, 1929, Chap. 48, Sec. 48-702(m).

16. Nevada Compiled Laws (1931-1941), Vol. 1, Sec. 2825.02

17. New Hampshire Revised Laws, 1942, Chap. 218, Sec. 1(P).

18. New Jersey Statutes, Title 43, Sec. 43:21-19(3)(o).

19. New Mexico Statutes, 1941, Vol. 4, Art. 8, Sec. 57-822.

20. North Carolina General Statutes, 1943, Vol. 2, Chap. 96, Art. 2, Sec. 96-8.

21. Page's Ohio General Code, 1937, Vol. 1, Chap. 23a, Sec. 1345-1.

22. Oklahoma Statutes, 1941, Title 40, Sec. 229.

23. Oregon Compiled Laws, 1939, Vol. 7, Title 126, Chap. 7, Sec. 127-702.

24. Purdon's Pennsylvania Statutes, 1941, Title 43, Chap. 14, Sec. 753(u).

25. General Laws of Rhode Island, 1938, Chap. 284, Sec. 3(16).

26. South Carolina Code of Laws, 1942, Vol. 4, Art. 5, Sec. 7035-99(m)(1).

27. South Dakota Code, 1939, Vol. 1, Title 17, Chap. 17.08, Sec. 17.0802(13).

28. Vernon's Texas Statutes, 1936, Title 83, Chap. 14, Art. 5221b-17(o).

29. The Utah Code, 1943, Vol. 3, Title 42, Chap. 2a, Sec. 42-2a-19(p).

30. Laws of Vermont, 1939—No. 181, Sec. 2.

31. The Virginia Code of 1942, Title 16, Chap. 76D, Sec. 1887(94)(r).

32. Remington's Revised Statutes of Washington, 1931, Title 67, Chap. 2-B, Sec. 9998-119(m).

33. The West Virginia Code, 1937, Chap. 21, Art. 1, Sec. 2366(3).

34. Wisconsin Statutes, 1943, Chap. 108, Sec. 108.02(6).

35. Wyoming Session Laws, 1937, Chap. 113, Sec. 2(n).

State Workmen's Compensation Acts which include board and lodging in their definition of wages:

1. Code of Alabama, Title 26, Chap. 5, Sec. 262.
2. 1935 Colorado Statutes, Vol. III, Chap. 97, Article 7, Sec. 326.
3. General Statutes of Connecticut, Vol. 2, Chap. 280, Part B, Sec. 5238.
4. Revised Code of Delaware, 1935, Chap. 175, Par. 6117, Sec. 47.
5. District of Columbia Code, 1940, Title 36, Chap. 5.
6. Florida General Acts & Resolutions, Title XXIX, Chap. 440, Sec. 440.02.
7. Deering's California Code, Chap. 1, Division IV, Part 2, Sec. 4454.
8. Code of Georgia, 1933, Title 114, Chap. 114-1, Secs. 114-402, 114-404.
9. Revised Laws of Hawaii, 1935, Chap. 245, Sec. 7540.
10. Idaho Code, 1932, Title 43, Chap. 18, Sec. 43-1814.
11. Illinois Revised Statutes, 1943, Chap. 48, Sec. 147.
12. Code of Iowa, 1939, Chap. 70, Sec. 1397.

13. General Statutes of Kansas, 1935, Chap. 44, Art. 5, Sec. 44-511.

14. Laws of Massachusetts, 1942, Chap. 152, Sec. 1.

15. Michigan Compiled Laws, 1929, Chap. 150, Sec. 8427.

16. Missouri Revised Statutes, 1939, Vol. 1, Chap. 29, Sec. 3710.

17. Montana Revised Codes, 1935, Vol. 2, Chap. 256, Sec. 2904.

18. Compiled Statutes of Nebraska, 1929, Chap. 48, Art. 1, Sec. 48-126.

19. New Jersey Statutes, Title 34, Chap. 15, Sec. 34:15-37.

20. New Mexico Statutes, 1941, Vol. 4, Art. 9, Sec. 57-912.

21. North Carolina General Statutes, 1943, Vol. 2, Chap. 97, Art. 1, Sec. 97-2.

22. North Dakota Compiled Laws, 1913-1925, Chap. 5, Art. 11a, Sec. 396 a 2.

23. Oklahoma Statutes, 1941, Title 85, Sec. 3.

24. Oregon Compiled Laws, 1939, Vol. 7, Title 102, Cerap. 17, Art. 1, Sec. 102-1702.

25. Purdon's Pennsylvania Statutes, 1941, Title 77, Chap. 5, Sec. 582.

26. General Laws of Rhode Island, 1938, Chap. 300, Art. 2, Sec. 13.

27. South Carolina Code of Laws, 1942, Vol. 4, Art. 4, Sec. 7035-99.

28. South Dakota Code, 1939, Vol. 1, Title 64, Sec. 64.0102.

29. Code of Tennessee, 1932, Chap. 43, Sec. 6852.

30. Vernon's Texas Statutes, 1936, Title 130, Part 4, Art. 8309, Sec. 1.

31. The Utah Code, 1943, Vol. 3, Title 42, Secs. 42-1-42, 42-1-70.

32. Vermont Public Laws, 1933, Title 30, Chap. 264, Sec. 6485.

33. The Virginia Code of 1942, Title 16, Chap. 76A, Sec. 1887(2).

34. The West Virginia Code, 1937, Chap. 23, Art. 4, Secs. 2366(3), 2539.

35. Wisconsin Statutes, 1943, Chap. 102, Sec. 102.11.

36. Social Laws of Wyoming, 1943, Chap. 114, Sec. 124-117.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1038 103

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE, CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

BRIEF OF RESPONDENT UNITED FRUIT COMPANY IN OPPOSITION TO PETITION FOR CERTIORARI

CHAUNCEY I. CLARK,
HERBERT M. LORD,
Counsel for Respondent,
27 William Street,
New York, N. Y.

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Question Involved

The sole question presented by the petition is whether under Sec. 594, Title 46 U. S. C. the libellants should have been allowed to recover one month's maintenance in addition to "one month's wages" (R. p. 36).

POINT I

The courts below correctly held that the statute meant one month's wages as set forth in the articles exclusive of maintenance or subsistence.

A. The term "wages" as used in Sec. 594 and in related sections of the Seamen's Act clearly excludes maintenance or subsistence.

In 1872, when Sec. 594 was originally enacted (Act of June 7, 1872, Chapter 322, Sec. 21), the term "wages" had

a plain and well settled meaning, i.e., the amount of money payable to a crew member periodically as specified in the articles, without inclusion or reference to any maintenance or subsistence which the shipowner was obligated to supply.

Indeed, for hundreds of years "wages" had been so understood in admiralty law. Continuously from the time of the Laws of Oleron and the Laws of Wisby* down to the present time seamen's wages and subsistence have been recognized as separate and distinct, and mutually exclusive.

The authorities antedating the Act of June 7, 1872 consistently recognized that whether the seamen's claim was for recovery of wages, maintenance and cure, or wages to the prosperous conclusion of the voyage, or wages to the end of the voyage plus damages for repatriation expense, loss of personal effects and subsistence, that "wages" meant money compensation for services rendered as a distinct unit of damages. Without exception such authorities fail to support in any way petitioners' contention that the meaning of "wages" in general maritime law is any broader than above indicated, or as popularly understood when the statute was enacted.

The following cases are typical instances of Court adherence to the distinction between "wages" and other elements of damage such as subsistence or travelling expenses: *The Rovena,* 20 Fed. Cas. p. 1272; *Hunt* v. *Colburn, et al.,* 12 Fed. Cas. pp. 905-6; *Hutchinson* v. *Coombs,* 12 Fed. Cas. p. 1083; *Orne* v. *Townsend,* 18 Fed. Cas. p. 825; *Jehner et al.* v. *Philadelphia & R.R. Co.,* 13 Fed. Cas. p. 436.

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* Article 18 clearly indicates that wages included money compensation only, whereas Article 19 distinguished between wages and subsistence (30 Fed. Cas. p. 1189).

Compare *The Hibernia,* 12 Fed. Cas. p. 112, and *Bates* v. *Seabury, et al.,* 2 Fed. Cas. p. 1025, which show that in computing a seaman's lay or agreed share of net profits of the voyage, in lieu of wages, no account could be taken of subsistence. The interesting feature of this comparison is that such cases do not indicate a different rule of damages than where wages are determined on a fixed salary basis.

Silent but persuasive testimony that subsistence is not included in "wages" are many decisions in which decrees for cash "wages" were allowed to seamen without the slightest mention or consideration of subsistence. *The America,* 1 Fed. Cas., p. 605; *Johnson et al.* v. *The Coriolanus,* 13 Fed. Cas., p. 737; *The Ocean Spray,* 18 Fed. Cas., p. 558; *Farrell et al.* v. *French,* 8 Fed. Cas., p. 1081 (S. D. N. Y.); *Hayes* v. *The J. L. Wickwire,* 11 Fed. Cas., p. 909; *The Dolphin,* 7 Fed. Cas., p. 861; *The Mary Belle Roberts,* 16 Fed. Cas., p. 960; *Sheffield* v. *Page,* 21 Fed. Cas., p. 1228; *Veacock* v. *McCall,* 28 Fed. Cas., p. 1118; *The Wanderer,* 20 Fed. 655; *The Heroe,* 21 Fed. 525; *Dary* v. *The Caroline Miller,* 36 Fed. 507; *Waitshoair et al.* v. *The Craigend,* 42 Fed. 175; *The Ida McKay,* 99 Fed. 1002; *The Emma F. Angell,* 217 Fed. 311.

The term "wages" also appears in several related sections of the Seamen's Act (Tit. 46 U. S. C., Chap. 18, Secs. 541-713), reference to which shows conclusively that the meaning of the term is confined to "wages" in the ordinary sense, payable in money as specified in the articles, exclusive of everything else.

Sec. 713 of the Act sets forth the statutory form of articles of agreement between shipowner and crew wherein

> "in consideration of which service, to be duly performed, the said master hereby agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale."

As conceded in the Petition, page 10, the articles in this case followed said statutory form.

As quoted above, Sec. 713 contemplates and in fact requires payment *"as wages"* of the *"sums against their names respectively expressed"*, *"and"* in addition (not including but excluding the same from such "wages") requires the owner to supply the crew "with provisions according to the annexed scale",—thus making it perfectly clear that as used in the Act "wages" must be given the common and ordinary meaning firmly attached thereto in admiralty law.

Sec. 591 of the Act specifies the time when a seamen's right "to wages *and* provisions" shall be taken to commence. Here again "wages" is distinguished by the conjunctive "and" from the "provisions" required to be supplied. The significance of the phrase "wages and provisions" (not "wages including provisions") was recognized in the decision of the Circuit Court (L. Hand, C. J.) affirming the District Court on this point:

> "As to the claim for maintenance, while, it is true the statute is not punitive and should be construed liberally, we see no reason to add to it what does not appear on its face. In § 591 Congress used the phrase: 'A seamen's right to wages and provisions', while elsewhere in the sections dealing with 'Wages of Seamen' —§§ 591-605—it spoke only of 'wages'. This opposition seems to us not to be without significance. Moreover, the same distinction is carried forward into § 665 regarding 'provisions'" (R. p. 38).

In Sec. 597 the Act makes provision for payment to a seaman on demand upon arrival in port "one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made". The balance of "wages" earned and remaining "unpaid" can only refer to the sums against the seaman's name in the articles "as wages" (Sec. 713). The phrase "remaining unpaid" is wholly inapt with relation to provisions supplied during the voyage.

Cases involving Sec. 597 show very clearly that the "wages" referred to therein have reference only to the sums specified as wages in the articles, without taking any account of provisions or subsistence. See for example, *The London*, 241 Fed. 863 (C. C. A. 3), cert. den. 245 U. S. 652.

It is inconceivable that without express statutory definition to the contrary the term "wages" in Sec. 594 was intended to have a different meaning from that to be accorded to the same term in the other sections of the Act above mentioned. The District Court and Circuit Court of Appeals were clearly correct (assuming discharge of the petitioners was improper) in awarding the petitioners by way of liquidated damages only the "one month's wages" required to be paid pursuant to Sec. 594, i.e., the respective sums set opposite their names "as wages" in the ship's articles.

There is not a word in Sec. 594 suggesting that the "one month's wages" should be given an enlarged or special meaning. As the Court said in *Bockes* v. *Wemple*, 115 N. Y. 302:

> "The intent of the legislature is to be sought, primarily, in the words used and, if they are free from ambiguity, there is no occasion to search elsewhere for their meaning. As it was said in McClusky v.

> Cromwell (11 N. Y. 593), 'It is not allowable to interpret what has no need of interpretation; and when the words have a precise and definite meaning to go in search of conjecture, in order to restrict or extend the meaning. The natural and obvious meaning should be taken without resorting to subtle and forced construction'" (p. 308).

This is particularly true since the word "wages" had, as heretofore stated, a "judicially settled meaning" and must be presumed to have been used in that sense by Congress. *United States* v. *Merriam,* 263 U. S. 179, 187; *Kepner* v. *United States,* 195 U. S. 100, 124; *The Abbotsford,* 98 U. S. 440, 444; *Berwind-White Coal Mining Co.* v. *Rothensies,* 137 F. (2d) 60, 62 (C. C. A. 3).

In *The Steel Trader,* 275 U. S. 388, the Court below allowed a seaman, by way of damages for improper discharge under Sec. 594, wages to the end of the voyage but did not include subsistence in the amount allowed as damages although subsistence was expressly demanded. The Circuit Court affirmed. This Court held recovery should have been limited to "one month's wages" but expressed no disagreement with the exclusion of subsistence. The issue as to the propriety of including subsistence having been clearly raised, the fact that this Court did not disagree with the exclusion of subsistence from the one month's wages allowed cannot be considered inadvertent, particularly since this Court undertook (p. 389) to properly interpret and construe Sec. 594.

Petitioners refer to a number of modern statutes said to be *in pari materia* with Sec. 594. These statutes, which contain special definitions of "wages" extending the ordinary meaning of the term, are entirely irrelevant since the enlarged meaning of "wages" as used therein depends entirely upon the special statutory definition. Such statutes cannot be said to be *in pari materia* with Sec. 594, which

was enacted at a time when "wages" had a well settled meaning in maritime matters relating to seamen, and did not in any way purport to broaden such meaning.

POINT II

The opinion of the Circuit Court of Appeals (R. p. 36) is not in apparent conflict with the decision of the Fourth Circuit in *Lakos* v. *Saliaris*.

The question in *Lakos* v. *Saliaris*, 116 F. (2d) 440, was whether a war bonus should be taken into account in computing one-half the balance of a seaman's wages due upon arrival in port under Sec. 597, above mentioned. The Court's inclusion of the war bonus is in harmony with the long-standing rule that bonuses constitute part of seamen's wages. *The Frank C. Barker*, 19 Fed. 332. Accordingly, there is no apparent conflict between the *Lakos* v. *Saliaris* decision and the Circuit Court of Appeals' decision in this case.

POINT III

The petition should be denied.

In event of the petition being granted, which we oppose, we believe that review should also be had, on the record already filed for petitioners, of that part of the decision granting libellants one month's wages.

Respectfully submitted,

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Dated: New York, July 14, 1944.